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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/008,241	01/16/1998	DAVID S. STUTZ	777.115USR	6009

26119 7590 12/02/2004

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PORTLAND, OR 97204

EXAMINER

COURTENAY III, ST JOHN

ART UNIT	PAPER NUMBER
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2126

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/008,241

**Applicant(s)**

STUTZ ET AL.

**Examiner**

St. John Courtenay III

**Art Unit**

2126

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.


### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
**ST. JOHN COURTENAY III**  
**PRIMARY EXAMINER**

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **Response to Amendment**

1. Responsive to Applicant's request on page 4 of the Amendment response received on March 18, 2004, the Amendment After Final, filed Jan. 7, 2003, was entered.

2. With respect to the Notice of Non-compliant Amendment mailed March 24, 2004, Applicant is entirely correct that 37 C.F.R. §1.173 governs amendments in reissue applications. The Notice of Non-compliant Amendment was mailed by the Legal Instrument Examiner in error without the Examiner's knowledge.

3. The amendment received on April 26, 2004 has been entered (paper #27).

4. The reissue oath/declaration filed with this application is defective (see **37 CFR 1.175** and **MPEP § 1414**) because of the following:

To place the application in condition for allowance, subject to a final updated search, a supplemental oath/declaration is needed because of the amendments to the claims and drawings not covered by the most recent, previous reissue declaration, received April 24, 2002 (paper #14).

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5. In accordance with **37 CFR 1.175(b)(1)**, a supplemental reissue oath/declaration under **37 CFR 1.175(b)(1)** must be received before this reissue application can be allowed (subject to a final updated search).

6. Accordingly claims 1-53 are rejected as being based upon a defective reissue declaration under **35 U.S.C. 251** as set forth above. See **37 CFR 1.175**. The nature of the defect(s) in the reissue declaration is set forth in the discussion above in this Office action.

7. Receipt of an appropriate supplemental oath/declaration under **37 CFR 1.175(b)(1)** will overcome this rejection under **35 U.S.C. 251**.

An example of acceptable language to be used in the supplemental oath/declaration is as follows:

"Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant."

8. The Examiner previously called Attorney Stephen Wight (503-226-7391) and requested a supplemental reissue oath/declaration under **37 CFR 1.175(b)(1)**.

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9. As of Nov. 26, 2004, no supplemental declaration has been received.

Accordingly, this action is made final pursuant to the procedures set forth under MPEP 1444.

MPEP 1444: "When a supplemental oath/declaration under **37 CFR 1.175(b)(1)** directed to the amendments or other corrections of error is required, the examiner is encouraged to telephone the applicant and request the submission of the supplemental oath/declaration by fax. If the circumstances do not permit making a telephone call, or if applicant declines or is unable to promptly submit the oath/declaration, the examiner should issue a final Office action (final rejection) and use form paragraph **14.05.02** where the action issued is a second or subsequent action on the merits."

10. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in **37 CFR 1.136(a)**.

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to **37 CFR 1.136(a)** will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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**How to Contact the Examiner:**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to St. John Courtenay III, whose telephone number is 571-272-3761. A voice mail service is also available at this number. The Examiner can normally be reached on Monday - Friday, 8:00 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, An Meng-AI who can be reached on 571-272-3756. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**All responses sent by U.S. Mail should be mailed to:**

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

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**Patent Customers advised to FAX communications to the USPTO**

**<http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/faxnotice.pdf>**

Effective Oct. 15, 2003, ALL patent application correspondence transmitted by FAX must be directed to the new PTO central FAX number:

**NEW PTO CENTRAL FAX NUMBER:  
703-872-9306**

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- Any inquiry of a general nature or relating to the status of this application should be directed to the **TC 2100 Group receptionist: (703) 305-3900.**

**Please direct inquiries regarding fees, paper matching, and other issues not involving the Examiner to:**

**Technical Center 2100 CUSTOMER SERVICE: 703 306-5631**

The Manual of Patent Examining Procedure (MPEP) is available online at:  
**<http://www.uspto.gov/web/offices/pac/mpep/index.html>**

  
**ST. JOHN COURTENAY III**  
**PRIMARY EXAMINER**